

## Message Text

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12

ORIGIN EA-10

INFO OCT-01 ISO-00 L-02 INR-07 TRSE-00 STR-01 COME-00 EB-07

AGR-05 TAR-01 PM-03 NSC-05 SP-02 SS-15 RSC-01 CIAE-00

NSAE-00 DODE-00 AID-05 FRB-03 XMB-02 OPIC-03 CIEP-01

LAB-04 SIL-01 OMB-01 FEA-01 H-01 /082 R

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APPROVED BY EA/EP:AGEBER

EB/IFD/OIA:TRBRODERICK(INFO)

L/EB:SRBOND (INFO)

INR/DFR/REF:RKATES (INFO)

TREASURY:RGOODMAN (INFO)

TREASURY:WCMCFADDEN (INFO)

STR:SLANDE(INFO)

COMMERCE: DARRILL (INFO)

EA/VN:RRICHMOND (INFO)

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R 311951Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY SAIGON

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E.O. 11652:N/A

TAGS: EINV, ETRD

SUBJECT:COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES

(GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE

V OF THE TRADE ACT OF 1974

REF: (A) STATE 282968; (B) STATE 282967

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED UNDER  
THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION

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(ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF

PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH

COUNTRY IS QUOTE OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW, UNQUOTE OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC 502 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF. B LIMITED OFFICIAL USE

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WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS.

4. REGARDING VIETNAM, WE ARE UNAWARE OF THE EXISTENCE OF ANY OUTSTANDING CASES WHICH MIGHT AFFECT THE COUNTRY'S

ELIGIBILITY UNDER SEC 502 (B) (4) AND (6). SHOULD ,  
HOWEVER, YOU KNOW OF ANY CASES OF WHICH WE ARE UNAWARE,  
PLEASE REPORT THE STATUS ASAP.

5. IF THIS ISSUE IS INDEED APPLICABLE TO VIETNAM, YOUR  
STARTING POINT FOR EVALUATION SHOULD BE THE TEXT OF THE  
LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS OF  
502 (B) (4) IS COMPLETED, YOU SHOULD ASSUME IT APPLIES  
TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF  
U.S. CITIZENS, WITHOUT REGARD TO VALUE. AS A QUOTE RULE  
OF REASON, UNQUOTE WE ARE LIMITING THE EVALUATION TO  
CASES ARISING IN THE POST-WAR ERA, I.E., SINCE JANUARY 1,  
1946, OR THE DATE OF INDEPENDENCE OF THOSE COUNTRIES  
RECEIVING INDEPENDENCE, WHICHEVER IS LATER. SINCE SOME

ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT  
OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION OR  
RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EF-  
FECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, YOU SHOULD  
INFORM DEPARTMENT OF SUCH CASES TO ENABLE US TO EXERCISE  
JUDGMENT IN DETERMINING WHETHER QUOTE NATIONALIZATION  
UNQUOTE HAS OCCURRED WITHIN THE MEANING OF 502 (B) (4) (A)  
(C). JUDGMENTS MUST ALSO BE MADE TO DETERMINE, INTER  
ALIA, WHETHER THE CRITERIA OF 502 (B) (4) (D) ARE BEING MET,  
AND WHETHER QUOTE GOOD FAITH UNQUOTE IS PRESENT UNDER  
502 (B) (6).

6. SHOULD ANY DISPUTES EXIST OF WHICH WE ARE UNAWARE,  
WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING WHAT STEPS  
USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO  
THE ATTENTION OF HOST GOVERNMENT OFFICIALS, AND TO EN-  
COURAGE RESOLUTION OF OUTSTANDING DISPUTES. KISSINGER

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## Message Attributes

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